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Comment

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In the Matter of

Preemption of Local Zoning)

Regulation of Satellite Earth Stations)

and)

Implementation of Section 207 of the)

Telecommunications Act of 1996)

)

Objection to the Adoption of a Rule)

Requiring Installation of Direct)

Satellite Dish Antennae at)

Condominium Associations)

and Cooperatives)

IB Docket No. 95-59

CS Docket No. 96-83

COMMENTS OF:

Marshall Frost, P.E., P.P.
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USA

I, Marshall Frost, file these comments on September 24, 1996, with reference to the FCC Docket Numbers IB 95-59 and CS 96-83.

Summary

It is Frost, Christenson & Associates' opinion that the regulations adopted on August 6, 1996 by the Federal Communications Commission should not be applied to Condominium Associations or Cooperatives for the following reasons:

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- Installation of the direct satellite dish antennae requires penetration of the building envelope, which will result in water penetration through the envelope system.
- Leaks, which manifest in the interior of dwelling units, will occur in units other than the unit which installed the direct satellite dish antenna.
- Leaks, which do not penetrate into the dwelling units, will, over time, cause damage to the common elements.
- Depending on the architectural design, the multiplicity of installations will concentrate the potential for water penetration through the building envelope.
- Patio, balcony, wall and chimney mounted installations will destroy the development scheme of the community.
- Ground mounted direct satellite dish antennae will be subject to damage during normal grounds maintenance and repairs.
- Building and roof mounted direct satellite dish antennae will interfere with the maintenance, repair and replacement of the building's common elements.
- Interior leaks, and resultant damage will be difficult, if not impossible, to trace to a particular installation of a direct satellite dish antenna, to establish responsibility for the damage.
- The general membership will be required to bear the cost of repairs and/or premature replacement of common elements due to damage resulting from the installation of the direct satellite dish antennae by a limited number of the Unit Owners.
- Implementation of the rule will preclude the Association membership from determining, in accordance with the requirements of the Association's enabling documents, whether the membership should accept the additional responsibility of allowing the installation of the direct satellite dish antennae.

Introduction

Frost, Christenson & Associates has received a copy of FCC 96-328 regarding the installation of Direct Satellite Dish Antenna. As part of 96-328, the FCC indicated that the rules regarding the installation of Direct Satellite Dish Antenna did not apply to:

"48. ... (b) property not under the exclusive use and control of a person who has a direct or indirect ownership interest in the property, including the outside of the building, including the roof; and (c) residential or commercial property that is subject to lease agreements."

further, they state:

"59. ... We are unable to conclude on this record, however, that the same analysis applies with regard to the placement of antennae on common areas or rental properties, property not within the exclusive

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control of a person with an ownership interest, where a community association or landlord is legally responsible for maintenance and repair and can be liable for failure to perform its duties properly. Such situation raises different considerations.

and;

"63 ... We conclude that the record before us at this time is incomplete and insufficient on the legal, technical and practical issues relating to whether, and if so how, to extend our rule to situations in which antennae may be installed on common property of the benefit of one with an ownership interest or on a landlord's property for the benefit of a renter."

As a result of these findings, the FCC has invited further comment on the applicability of regulations regarding installation of Direct Satellite Dish Antenna at community associations where the Unit Owner does not have:

"48. (a) property within the exclusive use or control of a person who has a direct or indirect ownership interest in the property."

This letter is intended to provide comments on the applicability of rules requiring the installation of Direct Satellite Dish Antenna at property held in a Condominium or Cooperative form of ownership.

Background

Frost, Christenson & Associates has been actively involved with community associations for almost twenty (20) years. During that time period, Frost, Christenson & Associates has provided engineering, planning and landscape architectural services to over three hundred (300) community associations. For the most part, these Associations are located in New Jersey, but a limited number of clients have been from Pennsylvania, New York, and Virginia.

A significant part of the services Frost, Christenson & Associates provides to community associations relates to the building envelope, and almost always involves water penetration into the individual units, or worse, into wall cavities where it typically goes unnoticed. In the latter case, it is not unusual for continuing deterioration of the building components and structural elements to occur over time, resulting in major expenditures on the part of the Association to replace damaged building elements.

At the same time, Frost, Christenson & Associates provides services to community associations when they replace components of the building's envelope at the end of the building element's service life. This procedure is complicated by the diversity of personalities of the individual owners, and the difficulty in obtaining cooperation of the residents.

With the adoption of 96-328, Frost, Christenson & Associates has been contacted by various community associations as to the applicability of Rule 96-328 to their particular

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situation, and the anticipated impact. Frost, Christenson & Associates has made technical recommendations to various Homeowner Associations on the implementation of that Rule, and has spent considerable time evaluating the implementation of the Rule as it pertains to Condominium Associations. As a result of this latter evaluation, Frost, Christenson & Associates has decided to submit written comments directly to the FCC for consideration.

Form of Ownership

The form of ownership of the property is not the proper determining factor in whether the installation of Direct Satellite Dish Antenna should be permitted in every instance. For the purposes of discussion, the following will differentiate between a Homeowner Association (where the property is "within the exclusive use or control of a person who has a direct or indirect ownership interest in the property"), and a Condominium Association (where the property is "not under the exclusive use and control of a person who has a direct or indirect ownership interest in the property, including the outside of the building, including the roof"). However, many Homeowner Associations fall within this latter group since the Homeowner Association is responsible for the maintenance, repair and replacement of the building envelope and grounds.

Specific reference will not be made to Cooperatives. However, it has been our experience that Cooperatives generally have the same characteristics as Condominiums regarding the building envelope (roof, siding, etc.). Our comments that follow relate equally to Condominiums and Cooperatives, although only Condominiums will be referenced. In addition, many of the comments may apply to leased residential property.

It should be noted that many Homeowner Associations have maintenance, repair and replacement requirements for the building envelope (roofs, siding, etc.), and should be considered to fall under Section 48(b) above. However, this will not be addressed in this writing.

The issue of installation of Direct Satellite Dish Antenna on common areas cannot be clearly defined by the distinction between a Homeowner Association, and a Condominium Association.

The installation of a Direct Satellite Dish Antenna impacts a number of areas including:

- Aesthetics.
- Denigration of the Development Scheme.
- Interference with Association maintenance, repair and replacement requirements.
- Potential damage to property not owned by the owner-installer of the Direct Satellite Dish Antenna.

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Aesthetics will not be addressed, except in general terms. It is our reading of Rule 96-328 that the FCC does not consider aesthetics, in itself, to be a determining factor as to the installation of Direct Satellite Dish Antenna.

For the purpose of this discussion, three types of installation will be considered:

- Ground mounted
- Roof mounted
- Building mounted (defined as not being roof mounted, but attached to the building).

Each mounting location has different, potential impacts depending on the type of Architecture (Row Townhouse, Condominium Flat, High-rise Structure).

For the purpose of this discussion we will use the following definitions:

- Townhouse design - an attached dwelling, with no other dwelling unit located above or below the dwelling in question, and with an independent roof over only the dwelling in question.
- Condominium Flat (apartment) design - an attached dwelling, with another dwelling unit located, in whole or in part, above or below the dwelling in question.
- High-rise Structure - a series of Condominium Flats, "stacked" vertically to a height in excess of three (3) stories.

In the case of Condominium Flats, and High-rise Structures, a roof (or segment of a roof) will be located over, but not necessarily directly above, more than one (1) dwelling unit.

Ground Mounted Direct Satellite Dish Antennae

In the case of ground mounted Direct Satellite Dish Antennae, it is Frost, Christenson & Associates' opinion that it is probably wise to avoid this type of installation.

- Ground mounting makes the installation susceptible to theft, vandalism, and damage during normal grounds maintenance and repair.
- Reasonable requirements for location (i.e. at the rear of a building), may interfere with line of sight requirements of the antenna.
- Direct burial of the cable will be required, and damage to the cable may occur during normal grounds maintenance, or during grading and drainage repairs or modifications.
- Direct Satellite Dish Antenna cable installation may damage existing underground utilities, irrigation systems, etc. (It is common for community associations, and for local development regulations, to require that no utilities be located above ground.)

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In the case of a Homeowner Association, location at ground level does not interfere with the enjoyment of the Common Area(s) since the Unit Owner would also "own" the property (therefore, it is not a Common Area). However, the potential for theft, vandalism, and interference with normal grounds maintenance still exists. The latter issue directly affects those Homeowner Associations having maintenance requirements for exterior grounds, even though owned by the Unit Owner; an Association requirement which occurs at a majority of Homeowner Associations in New Jersey.

In the case of a Condominium, the grounds are Common Elements. While Townhouse style architecture (in Condominium form of ownership) may not differ from that of a Homeowner Association, and the grounds surrounding a Condominium Townhouse are frequently thought of as "front", "side" or "rear" "yards" (In some instances, some portion of the Common Elements are set aside as a Limited Common Element for the individual use and enjoyment of a single Unit Owner.), most, if not all of the "grounds" are for the enjoyment of the membership, not just the nearest Unit Owner.

In the case of this type of Condominium architecture (Townhouse design), the same practical problems will be encountered as with a Townhouse in a Homeowner Association form of ownership.

- Ground mounting makes the installation susceptible to theft, vandalism, and damage during normal grounds maintenance and repair.
- Reasonable requirements for location (i.e. at the rear of a building), may interfere with line of sight requirements of the antenna.
- Direct burial of the cable will be required, and damage to the cable may occur during normal grounds maintenance, or during grading and drainage repairs or modifications.
- Direct Satellite Dish Antenna cable installation may damage existing underground utilities, irrigation systems, etc. (It is common for community associations, and for local development regulations, to require that no utilities be located above ground.)

In the case of both the Homeowner Association and Condominium Townhouse architecture, location of the Direct Satellite Dish Antenna at ground level may be difficult due to existing landscaping, tree canopies, and distance from the building.

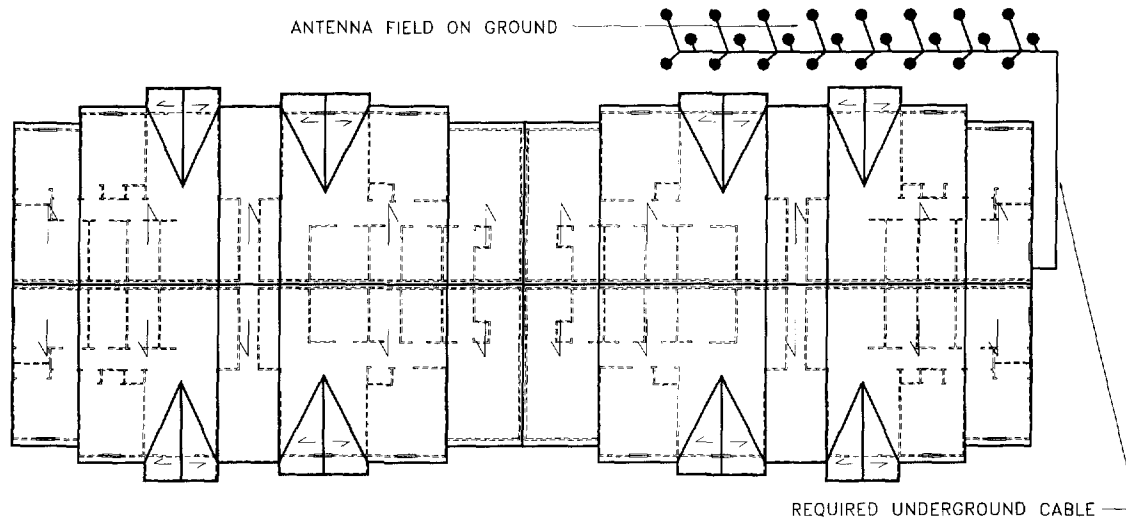
Association dwellings of a Condominium Flat or High-rise architecture result in significantly different considerations.

In each case, the grounds are Common Elements. There is no semblance of an individual "yard". The grounds are for the enjoyment of all members of the Association. The Association is required to provide lawn maintenance, along with shrub and tree maintenance and replacement. Again, the Association is responsible for grading and drainage. Ground mounting is simply not practical.

In addition, the proliferation of Direct Satellite Dish Antennae, located in close proximity to the building must be considered. Figure 1 shows a hypothetical multi-plex (multi-unit)

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building containing twenty-four (24) individual units. Shown on the drawing are twenty-four (24) Direct Satellite Dish Antenna. The interference with maintenance, and the visual impact is significant. In addition, the location of cable to each of the antennae must be controlled.



TYPICAL 24 UNIT MULTI-PLEX BUILDING
FIGURE 1 - GROUND MOUNTED ANTENNAE

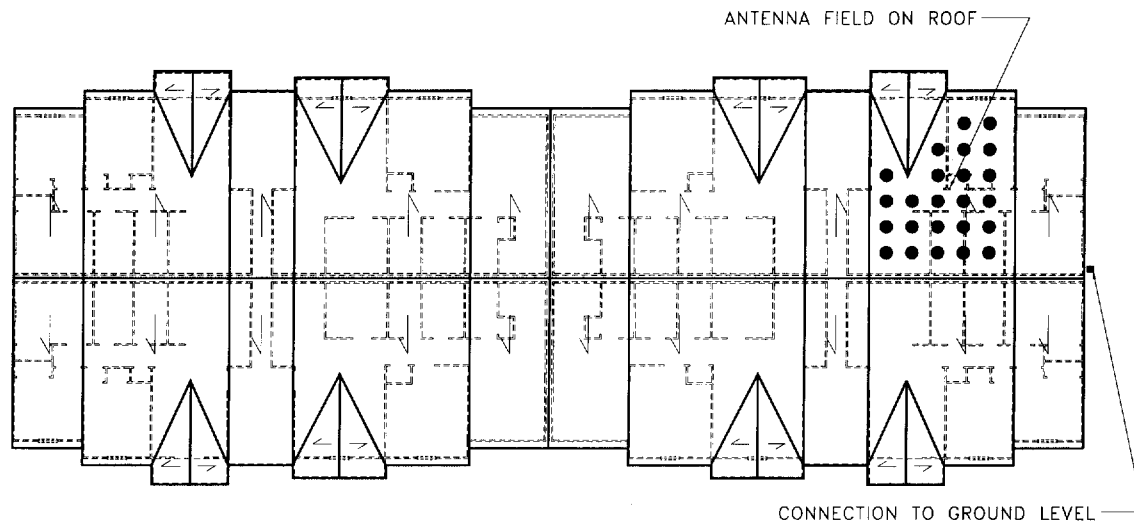
In our opinion, the location of Direct Satellite Dish Antennae at ground level is not practical, and prohibition in townhouse, multi-plex or high-rise architecture should be allowed.

Roof Mounted Direct Satellite Dish Antennae

Again, the impacts of roof mounted Direct Satellite Dish Antennae also differ with the architectural design.

In the case of Townhouse-style architecture, reasonable requirements for roof mounting can be established, assuming that those reasonable requirements do not result in a problem with reception at a particular unit. For instance, if the requirement is for location on the rear roof plane of a unit, and this location precludes adequate reception, the only alternate is for mounting on the front plane of the roof, which will detract from the development scheme, or for mounting on the building or grounds.

The problem becomes significant when multi-plex (apartment) buildings are considered. Figure 2 shows, again, a hypothetical twenty-four (24) unit building. Twenty-four (24) Direct Satellite Dish Antennae are located on the rear roof plane. The location of these antennae reflect that the building is already "wired" for CATV, and that the cable enters the building at the end of the structure, near ground level. (It is our experience that most multi-plex buildings are already "wired" for CATV, and connection to the Direct Satellite Dish Antenna would utilize the existing cable.)



TYPICAL 24 UNIT MULTI-PLEX BUILDING
FIGURE 2 – ROOF MOUNTED ANTENNAE

In total, potentially, twenty-four (24) mounting brackets must be attached to the roof. This attachment should be to the roof rafters (or trusses), not to the sheathing alone (in accordance with manufacturer's installation specifications). Potentially, twenty-four (24) penetrations must be made through the roof to provide for cable attachment, and twenty-four (24) antennae must be grounded. This cabling must (probably) exit the end wall of the building, and be carried to ground level (in an enclosure), where it will ultimately extend to the appropriate connection.

Any time an attachment is made to a roof system, or a penetration is made through a roof system, the opportunity for a leak exists. However, in a multi-plex building, the leak, and resulting damage, will typically manifest itself in the dwelling unit directly below the installation, which, most likely, is not the dwelling unit of the owner of the Direct Satellite Dish Antenna. This creates a series of problems for the Association.

- Who is responsible for the damage and repair?
- If it is to be the owner of the Direct Satellite Dish Antenna, can it be determined which Direct Satellite Dish Antenna caused the leak? The potential for damage, and resultant disputes is significant.
- Should an Association be responsible for a faulty installation?
- Should the entire membership be responsible for the cost of damage caused by one Unit Owner?

In each case, in our opinion, the answer should be no, unless the Association elects to accept that responsibility. Enforcement of 96-328 for Condominium Associations would require the installation of Direct Satellite Dish Antennae, and preempt the Association from accepting this responsibility (through establishment of Association regulations by the Board of Trustees) for any problems the Direct Satellite Dish Antennae installation causes.

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In a Condominium form of ownership, and in the case of many Homeowner Associations, the Association is responsible for the maintenance, repair and replacement of the roof. These responsibilities are also a consideration. Who will remove (and reinstall) the Direct Satellite Dish Antennae when it is necessary to repair or replace the roof? While this can be handled through regulations by the Association, the possibility of as many as twenty-four (24) different contractors arriving at a building to remove the Direct Satellite Dish Antennae when the roof is to be replaced is not practical.

The same problems occur with initial installation. Who will install the Direct Satellite Dish Antenna? Will each Unit Owner engage a contractor to install his or her Direct Satellite Dish Antenna on the roof, and provide the cabling to the ground level? And who will be responsible if reception degrades for one Unit Owner, due to damage from installation of another Direct Satellite Dish Antenna. In our opinion, allowing installation of multiple Direct Satellite Dish Antenna on the roof surface of Condominium Flat multi-plex buildings and High-rise structures is not practical. At the very least, the Association should have the choice as to whether this will be permitted.

In the case of high-rise architectural design, the problems cited above all come into play. However, a more serious problem will also exist.

High-rise design buildings usually incorporate "flat" roofs. While "steep" roofs are designed to "shed" water, "flat" roofs are designed to be water tight (and function as a bathtub, with a drain to discharge the stormwater from the roof surface). It is significantly more difficult to attach to, and penetrate, a flat roof without resultant leaks, or without affecting the wind load resistance of the roof system. Further, the location of leaks in flat roofs is more difficult, and the cost to repair such damage is more costly. Finally, cable installation becomes a complicated, if not impossible task.

In our opinion, the installation of Direct Satellite Dish Antennae on flat roofs, as is the case with Condominium Flat design, should be decided by the Association, and should probably be denied for the preceding reasons.

Building Mounted Direct Satellite Dish Antennae

In our opinion, the practicality of building mounted Direct Satellite Dish Antennae is not affected by the architecture, but by the form of ownership.

In the case of Townhouse style architecture, mounting a Direct Satellite Dish Antenna on a balcony, chimney or wall can be accomplished with relative ease. However, there remains the potential for damage to the building. Mounting to the building penetrates the building envelope, as does the cable connection through the wall. Both the mounting and the cable penetration provide an opportunity for water penetration into the building wall cavity.

This problem may be more significant with Condominium Associations where the structural elements are the responsibility of the Association. At least in the case of a

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Homeowner Association, any deterioration of the structural components is the responsibility of the Unit Owner.

As long as there is a clear delineation of responsibility for damage to the building, building mounting the direct satellite dish antenna may be appropriate, depending on the impact on the development scheme.

Community associations are planned around a development scheme. Architecture plays an important, if not the most important, role in defining the development scheme. Associations, both Homeowner and Condominium, control the development scheme through the enabling documents, typically through a Covenants Committee or Architectural Control Committee. The legal basis for this control is well established.

The maintenance of a development scheme does not rely on preventing any change to the building fenestration. It does, however, rely on uniformity. It will be impossible to maintain any uniformity of installation on patios, balconies, or exterior walls because a uniform location will not consistently provide the required line of sight (depending on building orientation).

In the case of a Homeowner Association with responsibility for maintenance of the building exterior, or of a Condominium with Townhouse style architecture, the ability exists to assess maintenance or repair costs to the individual Unit Owner for damage from the installation of a Direct Satellite Dish Antenna. Responsibility is not as easily assigned in Condominium Flat multi-plex or High-rise architecture.

As discussed, exterior mounted Direct Satellite Dish Antennae must be fastened to the building, and penetrate the building to allow cabling. In each case, the potential for water penetration into the building exists. Should this occur, the resulting leak frequently manifests itself well away from the source of water penetration. Damage will then be to property of someone other than the owner of the Direct Satellite Dish Antenna. In addition, water penetration through the building envelope can result in significant damage to the building's structure. Such damage may not become apparent until well after the owner of the Direct Satellite Dish Antenna has sold his or her unit. However, the Condominium Association will be responsible for repair to the structural components since they are part of the Common Elements.

In addition to the problems with installation, temporary removal for normal building maintenance and repair, etc., as discussed with roof mounted installations on Condominium Flat multi-plex or High-rise architecture, all exist.

Conclusions

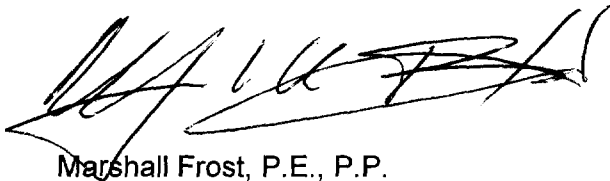
Each of the Association types (Homeowner Association, Condominium Association or Cooperative) reflects the form of ownership, not the architecture. In our opinion, both the form of ownership and the style of architecture must be considered in determining the potential impacts of the installation of Direct Satellite Dish Antennae.

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In our opinion, preclusion of any restrictions on the installation of Direct Satellite Dish Antennae should not be imposed on any Association which is responsible for the maintenance, repair and replacement of the components of the building envelope, whether it is a Homeowner Association, or a Condominium Association.

In the case of Condominium Flat multi-plex and High-rise architecture, regulations allowing the installation of Direct Satellite Dish Antennae should be controlled by the Association membership. Regulations prohibiting the installation of Direct Satellite Dish Antennae should be allowed, unless the Association elects to allow their installation, and assumes the problems associated with their installation. Otherwise, the Association will be required to deal with any and all problems resulting from the installation, and incur the related costs. These costs will be borne by the membership, with members without the Direct Satellite Dish Antennae effectively supporting those who elect to install the Direct Satellite Dish Antennae.

Submitted by:

A handwritten signature in black ink, appearing to read 'Marshall Frost', is written over a horizontal line.

Marshall Frost, P.E., P.P.
President
Frost, Christenson & Associates